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# When the lawmen must break the law...

JAMES WIEGHART

**WASHINGTON**—Bagging an obscure retired FBI man for tapping phones and opening mail is just about as fair as making Lt. William Calley pay for American war crimes in Vietnam or jailing a bunch of Cuban exiles for the Watergate break-in.

You would think that the Justice Department would have learned something about justice over the past decade of official lawlessness and government by coverup, but apparently it hasn't. The names at the top have changed, but it

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appears that Attorney General Griffin Bell is merely following in the footsteps of some of his illustrious predecessors, which included, of course, men like John N. Mitchell and Richard G. Kleindienst.

The case in point is the indictment last week in New York of John J. Kearney, 55, a retired FBI supervisor who was charged with five counts of illegal wiretapping and mail opening. At the time of the alleged offenses, five years ago, Kearney was head of Squad 47, which was responsible for neutralizing terrorist groups like the Weather Underground.

Now under our system of law, law enforcement officials are supposed to obey the law even while pursuing dangerous mad bombers like the Weather Underground, a group made up largely of spoiled rich kids claiming to be in the vanguard of the struggle to liberate the working class. So Kearney and his cohorts had no business breaking the law or even bending it. If cops, even federal cops, don't abide by the law, how in the world can we expect ordinary citizens to obey and respect the law?

But going after Kearney for a bit of extra-curricular wire tapping or mail opening at a time when wiretaps and mail and cable covers were as common as the head cold just doesn't seem like a fair or sensible way to approach the problem of official lawlessness. For instance, during the period of 1970 to 1972 when Squad 47 was trying to track down the Weather Underground, then-President Nixon and Henry Kissinger were slapping illegal wiretaps on government employees and newsmen in an effort to find out who was leaking classified information about the various war crimes they were ordering on behalf of the people of the United States.

Likewise, it was during this period that the CIA was merrily breaking the law against practicing its black arts of espionage domestically against fellow Americans, and it was during this period that the FBI and CIA were collaborating, along with other U.S. intelligence agencies, in routinely reading letters

and cables that Americans were sending abroad. In fact, this massive illegal invasion of privacy was still going on several years later when The News, in a series of stories by Frank Van Riper, exposed it, and still the Justice Department and the Federal Communications Commission refused to take action.

And that's not all by any stretch of the imagination. If one set out to just catalogue the crimes committed over the past 20 years or so by the FBI, CIA, army intelligence, the National Security Agency, the Internal Revenue Service and other governmental agencies, including various ad hoc inter-agency groups, it would take a good deal more space than I have for this column. There is good reason to believe that the Presidents, Attorneys General, National Security Advisors and the heads of the various agencies involved were, in most instances, generally aware of what was being done and had either approved the actions or at least failed to order them stopped.

The crimes went on because the responsible leaders of government, from the President on down, authorized them, not because underlings like Kearney were criminally inclined. And the crimes continued until they were ordered stopped by courageous bureaucrats like William Ruckelshaus and Clarence Kelley at the FBI and James Schlesinger and William Colby at CIA.

It's interesting to note that Colby and Ruckelshaus are out of government, Kelley is likely to bow out soon, under pressure from Bell, and only Schlesinger, President Carter's energy czar, appears to have a bright future in the federal government.

Now, if Bell is really interested in restoring public confidence in government, he could do so by applying the law equally, without fear or favor, and not by pinning the rap on a few underlings like Kearney. With J. Edgar Hoover dead, Nixon pardoned and out of reach, and Mitchell already convicted of Watergate crimes, perhaps it would be wise to concentrate on rebuilding the FBI instead of looking for lower echelon scapegoats for past misdeeds.

Meanwhile, if Bell is itching to hale some official malefactors to court to serve as an example for the new morality, he should get cracking on the investigation into bribes allegedly paid to Congressmen by the South Korean CIA.

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